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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,405	04/14/2006	Frank Erwin Schulte	740116-614	8708

25570 7590 07/29/2009  
ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.  
Intellectual Property Department  
P.O. Box 10064  
MCLEAN, VA 22102-8064

EXAMINER
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WOOD, JONATHAN K

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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07/29/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/595,405	<b>Applicant(s)</b> SCHULTE ET AL.	
	<b>Examiner</b> JONATHAN WOOD	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19,20 and 25-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19,20 and 25-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19-20 and 25-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19, lines 29-30 recites 'discontinuously surround the entire periphery'. It is unclear what periphery applicant is referring to. It is recommended to amend to 'the entire periphery of each sleeve section' or something similar to enhance clarity.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 19-20 and 25-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,826,756 to *Foster (Foster)* in view of US Patent No. 5,507,626 to *Yang (Yang)* and US PG PUB No. 2003/0150876 A1 to *Walters et al. (Walters)*.

*Foster* discloses a dispenser pump comprising a pump housing (14') attachable to a container (col. 3, line 33), a pump shaft (16') movable relative to the pump housing (col. 3, ll. 20-21), a dispenser head (56') on the pump shaft, a first sleeve section (98) which extends from the dispenser head toward the pump housing (col. 6, ll. 2-3) and radially surrounds the pump shaft, a third sleeve section (92') mounted on a collar (26')

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of the pump housing and movable into the first sleeve to form a telescopically extendable splash protection around the pump shaft (col. 6, ll. 2-7). *Foster* does not disclose a second sleeve section which extends from the first sleeve section, is movable into the first sleeve section, and allows for the third sleeve section to be moved into it so that the second sleeve section extends peripherally over the third sleeve section. *Foster* also does not specifically disclose that the sleeve sections are connected via cooperating projections.

However, *Yang* discloses a telescopic pump with a second sleeve section (20) which extends from a first sleeve section (10) and which is movable into the first sleeve section, the second sleeve section extending peripherally over a third sleeve section (30) (col. 3, ll. 1-20). It would have been obvious to one of ordinary skill in the art at the time of invention, under the teachings of *Yang*, to have incorporated a third sleeve section on the pump of *Foster* in order to reduce the number of pump strokes required to pump a certain amount of fluid while keeping the pump to a compact size (*Yang*, col. 1, ll. 49-54). This combination would require inserting an additional sleeve in between the first and third sleeves (98 and 92', respectively) of *Foster*.

Further, *Walters* shows a pump which utilizes a telescopic shroud having two sleeve sections (70 and 90), wherein the sleeve sections are interlocked via projections (92 and 80) and one of the projections is discontinuous (¶75, ll. 6-7). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Walters*, to have utilized projections like those of *Walters* to interconnect the three sleeves of *Foster* as modified by *Yang* in order to prevent separation of the

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sleeve sections (*Walters*, ¶80). The combination would result in the first sleeve section of Foster as modified by Yang having an inner projection engageable with an outer projection of the second sleeve section and similarly, an inner projection on the opposite end of the second sleeve section from the outer projection engageable with an outer projection of the third sleeve section. Although *Walters* shows a reverse orientation of the projections, it would have been obvious to have configured the projections as described above since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Especially since Foster as modified by Yang shows the third sleeve section having the largest diameter and receiving the other two sleeve sections internally, necessitating an inner projection on the third sleeve section to create an engagement with the second sleeve section.

Regarding claim 27, *Foster* as modified by *Yang* and *Walters* shows the overlapping areas of the sleeve sections having at least essentially the same length when the pump shaft is drawn in (*Foster*, Figure 6).

Regarding claim 28, *Foster* as modified by *Yang* and *Walters* shows the sleeve sections are lockable in a downward position (*Foster*, col. 5, ll. 28-32 & 54-59).

Regarding claims 29 and 30, *Foster* as modified by *Yang* and *Walters* shows a guide sleeve (*Foster*, indicated generally by 86' in Figure 5) which extends from the pump housing and surrounds the pump shaft (*Foster*, Figure 5), wherein the third sleeve section radially surrounds the guide sleeve at a distance and an annular space is formed between (*Foster*, Figure 5).

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Regarding claims 31-38, *Foster* as modified by *Yang* and *Walters* shows a helical spring (*Foster*, 42') located radially in between the pump shaft and the sleeve sections and axially between the pump housing and dispenser head (*Foster*, Figure 5).

5. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Yang* and *Walters* as applied to claim 19 above, and further in view of US Patent No. 5,156,307 to *Callahan et al.* (*Callahan*).

*Foster* as modified by *Yang* and *Walters* shows all aspects of the applicant's invention as set forth in claim 19 and further shows a valve with a valve ball (*Foster*, 36'), but does not specifically disclose the valve ball is of plastic material. However, *Callahan* discloses a valve ball (13) of metal, plastic or ceramic (col. 3, line 5). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Callahan*, to have made the valve ball of *Foster* as modified by *Yang* and *Walters* of plastic material in order to make the check valve more resistant to corrosive and aggressive fluids passing through the dispenser.

6. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Yang* and *Walters* as applied to claim 19 above, and further in view of US Patent No. 4,071,172 to *Balogh* (*Balogh*).

*Foster* as modified by *Yang* and *Walters* shows all aspects of the applicant's invention as set forth in claim 19, but does not specifically disclose all parts in a location exposed to liquid being dispensed are made of plastic. However, *Balogh* discloses a liquid dispenser in which all the parts are made of a plastic material (col. 1, ll. 33-35). It would have been obvious to one of ordinary skill at the time of the invention, under the

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teachings of *Balogh*, to have made all parts of the dispenser of *Foster* as modified by *Yang* and *Walters* exposed to liquid being dispensed of plastic material in order to increase the dispenser's resistance to corrosive and aggressive fluids.

### ***Response to Arguments***

7. Applicant's arguments filed 7/13/2009 have been fully considered but they are not persuasive. Referring to Page 2 of applicant's arguments, applicant states that the combination of *Foster* in view of *Yang* is only relevant to the pumping mechanism of *Foster*. However, examiner is simply applying the teaching of *Yang* to utilize three telescopic sections to reduce the number of pump strokes required to pump a certain amount of fluid while keeping the pump to a compact size. Specifically, the latter part of that teaching regarding keeping the pump to a compact size. The teaching is applied to the telescoping portion of the pump of *Foster* and not specifically to the pumping mechanism, as that is what *Yang* is relevant to. The useful portion of *Yang* is the fact that additional telescoping sleeves result in a compact compressed size, and therefore adding an additional sleeve to *Foster* would have been obvious in order to reduce its size when compressed. A similar teaching from a telescopic boom for instance, could have been utilized, but examiner chose *Yang* due to its similarity in overall art to *Foster*. Therefore, applicant's specific arguments regarding the operations of *Yang* versus the operations of *Foster* are considered irrelevant, as the only applied teaching is specifically to the benefits of the telescopic form of *Yang* and how and why those benefits could have been applied to *Foster* by one of ordinary skill in the art.

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8. Applicant's arguments on Page 3 with respect to the discontinuous projection have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754